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OFFICE OF PETITIONS

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| In re Application | : |
| Gregory Herd et al. | : |
| Application No. 10/024,571 | : DECISION ON APPLICATION |
| Filed: December 21, 2001 | : FOR PATENT TERM ADJUSTMENT |
| Attorney Docket No. 1748X/50823 | : |

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" under 37 CFR 1.705(b) filed January 5, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred twenty-one (221) to three hundred fifteen (315) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred fifteen (**315**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 6, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred twenty one days. On January 5, 2005, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred fifteen (315) days. Applicants dispute the reduction of nineteen (19) days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed January 25, 2002 and to the reduction of seventy-five (75) days attributed to applicant for failing to respond within three months to the non-Final Office Action mailed March 18, 2004.²

¹ PALM records indicate that the Issue Fee was received in the Office on January 5, 2005.

² A non-Final Office Action was mailed January 2, 2004 however a revised non-Final Office Action was mailed March 18, 2004 and the period of three months for response was restarted.

This application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of two hundred twenty-one (221) days based on an adjustment for PTO delay of three hundred fifteen (315) days pursuant to 35 U.S.C. 154(b)(1)(A)(I) and 37 C.F.R. § 1.703(a)(1) reduced by applicants' delays of nineteen days and seventy-five days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The reduction of ninety-four (94) days is at issue.

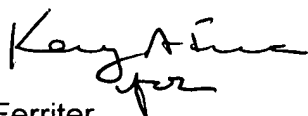
The reduction of 94 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the Notice to File Missing Parts of Application mailed January 25, 2002, is of record in the application with a date of receipt by the Office of April 25, 2002. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have entered the date that the instant application was complete as May 14, 2002 or assessed applicants a delay of nineteen (19) days. As well, the response to the non-Final Office Action mailed March 18, 2004 was timely filed June 16, 2004, within the three-month period under 37 CFR 1.704(b). The discrepancy exists because the mail date of the original non-Final Office Action was January 2, 2004 and thus applicant's delay was incorrectly calculated using three months from that date as the date the response was due. Thus, the Office should not have assessed applicants an additional delay of seventy-five (75) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

In view thereof, the patent should have issued with a revised Patent Term Adjustment of three hundred fifteen (315) days.

The Office will refer the matter to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Patricia Faison-Ball, Senior Petitions Attorney, at (571) 272-3212.



Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen